HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No…….. of 2001 (SS)

Smt. Nidhi Nautiyal vs. B.S.A. Pauri Garhwal

Approved for reporting.

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~~Not approved for reporting~~

Date of decision. 25.11.2003

Initial of Judge

Lodge No.401 of 2003

HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No…… of 2003 (SS)

Smt. Nidhi Nautiyal w/o Sri Jaideep Nautiyal
Assistant Teacher, Primary school, Sajhasain,
Pauri Garhwal ……..…… Petitioner

Versus

Basic Shiksha Adhikar, Pauri Garhwal …….. Respondents

Sri Raman Sah, Advocate for the petitioner
Sri H.M. Raturi, Advocate for the respondents

Dated: 25.11.2003

Hon'ble Rajesh Tandon, J.

By the present writ petition the petitioner has prayed for the issue of a writ, order or direction in the nature of certiorari quashing transfer order dated 3.11.2003 annexure-1 to the writ petition, passed by the respondent.

Briefly stated the facts giving rise to this writ petition are that the petitioner is posted as Assistant Teacher in Primary School, Sajasain, Block Dogadda, District Pauri Garhwal. The petitioner has alleged that vide order dated 30.6.2003, the petitioner was initially transferred from Primary school Khuwani to Primary School Sajhasaind where she joined on 15.7.2003 but within a period of four

months she was again transferred to Primary School Aldwa vide order dated 3.11.2003.

The petitioner has stated malafides against the respondent and alleged that she has been transferred by the authorities in order to accommodate their favourite persons.

Sri H.M. Raturi counsel for the respondent has argued that the order is only adjustment and it will no amount to transfer as the petitioner shall remain at the same Block and District.

So far as the transfer order is concerned no interference can be made under Article 226 of the Constitution of India.

It has been held by the Apex Court in the case *Shilpi Bose and others vs. State of Bihar and others AIR 1991 SC 532* as under*:*

"In our opinion, the courts should not interfere with a transfer order which are made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fide. A Government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from the one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the Courts ordinarily should not interfere with the order

instead affected partly should approach the higher authorities in the Department. If the Courts continue to interfere with day to day transfer orders issued by the Government and its subordinate authorities, there will be complete chaos in the Administration which would not be conducive to public interest. The High Court over looked these aspects in interfering with the transfer orders."

The Apex Court in the case State Bank of India vs. Anjan Sanyal and others (2001) 5 SCC 508. It has held as under:

"An order of transfer of an employee is a part of the service conditions an such order of transfer is not required to be interfered with lightly by a court of law in exercise of its discretionary jurisdictions unless the court finds that either the order is mala fide or that the service rules prohibit such transfer or that the authorities, who issued the order, had not the competence to pass the order."

It is well settled that the transfer is an exigency of service. However option for the petitioner to approach the higher authorities is available and the petitioner is at liberty to approach the higher authority. If the petitioner prefers such representation, within a period of two weeks after obtaining certified copy of this order, the same shall be disposed of within a period of 6 weeks by the authority

concerned. For a period of six weeks the transfer order shall remain in abeyance.

Subject to the aforesaid observations the writ petition is dismissed. No order as to costs.

25.11.2003 **(Rajesh Tandon, J.)**
Dhyani